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INTERNATIONAL LEGAL INSTRUMENTS AND MECHANISMS

(Chapter 39 of Agenda 21)

Report of the Secretary-General

SUMMARY

Given the importance of the principles of international law for sustainable development and of taking an integrated approach to international law in all courts, tribunals, other dispute settlement bodies, and other forums responsible for the interpretation of treaties, it is suggested that the principles and concepts contained in the report of the Expert Group meeting on the Identification of Principles of International Law for Sustainable Development be further studied and developed in relation to the formulation of new instruments, including soft-law instruments, and the interpretation and application of existing instruments, related to sustainable development. The Commission on Sustainable Development may wish to return to this subject for fuller consideration at its sixth session.

The attention of the Commission is also drawn to the recommendations of the Expert Group on the Identification of Principles of International Law for Sustainable Development.

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INTRODUCTION

1. The present report has been prepared by the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat in its capacity as task manager of chapter 39 of Agenda 21 1/ on international legal instruments and mechanisms. It focuses specifically on two issues: new and emerging issues, and trends. A more comprehensive review of developments related to chapter 39 since 1993, when the Commission on Sustainable Development at its second session reviewed this chapter, is contained in the addendum to this report.

I. NEW AND EMERGING ISSUES IN THE FIELD OF SUSTAINABLE DEVELOPMENT

2. New issues related to the role and effectiveness of non-legally binding (in other words, "soft") law in the integration of environment and development within a legal framework, to environmental impact assessment, and to compliance and enforcement are emerging in the field of sustainable development. Some of the more specific developments now emerging relate to the following areas: (a) development of a protocol on biosafety, in the field of the safe transfer, handling and use of genetically modified organisms (GMOs), focusing on the transboundary movement of such organisms; (b) the Berlin Mandate 2/ (United Nations Framework Convention on Climate Change) 3/ which launches a new process for strengthening developed country commitments to reducing greenhouse gas emissions beyond the year 2000, through the adoption of a protocol or another legal instrument; (c) provision of financial assistance and technical expertise to assist developing countries in integrating environment and development in the planning process; (d) safe management of radioactive waste; (e) a new waste assessment framework within the revised London Convention, applicable to all legal marine environment protection instruments, independent of the source of the wastes; (f) the prior informed consent (PIC) procedure; (g) forests (Ad Hoc Intergovernmental Panel on Forests established by the Commission on Sustainable Development at its third session); (h) chemical safety, sound management of chemicals, and development of a globally harmonized system of classification and labelling of chemicals; and (i) issues of liability and compensation for environmental damage and of application of environmental norms by military activities. (More information on these issues is contained in the addendum to this report.)

3. Other specific areas that have been mentioned as deserving of future attention include, inter alia, persistent organic pollutants and heavy metals; joint implementation and tradable permits; protection of marine biodiversity; protection of inland waters; protection of the soils; mountain ecosystems; introduction of genetically modified and alien organisms; child labour; and environmental impact assessment. The drawing up of two broader, procedural treaties have also been suggested: one would specify the obligations with respect to assisting developing countries in the implementation of international legal instruments; the other could contain guidelines for compatibility between trade and environment law.

II. PRINCIPLES OF INTERNATIONAL LAW FOR SUSTAINABLE DEVELOPMENT

4. Another emerging issue is identification of the principles and concepts that underlie international law for sustainable development. This has come about primarily for the following two reasons: the recognition that sustainable development has gained currency as a legitimate topic of international law, and the need to understand the legal implications of sustainable development. Furthermore, and perhaps of greater significance, is the integrating effect of sustainable development which makes it pertinent and legally relevant to other areas of international law, including, for example, environmental law and trade law.

5. Principles may perform a variety of functions in the international legal process, including (a) assisting in the development of new legal instruments; (b) assisting in the interpretation and application of treaty and other obligations; (c) establishing norms of a substantive nature; (d) establishing obligations of a procedural nature; and (e) assisting in the elaboration of detailed obligations. The role of principles in the interpretation and application of existing legal obligations, particularly treaty obligations, is especially important.

6. In 1995 both the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat and the United Nations Environment Programme (UNEP), acting jointly and in full consultation, organized two meetings of experts that addressed this issue. UNEP convened the first in a series of three meetings of its Expert Group Workshop on International Environmental Law Aiming at Sustainable Development, in response to decision 18/9 (1995), adopted by the Governing Council of UNEP at its eighteenth session. 4/ The outcome of all three Workshop meetings will be presented to the meeting of senior government officials to review the Montevideo Programme II and, subsequently, to the Governing Council of UNEP at its nineteenth session in 1997.

7. The Department for Policy Coordination and Sustainable Development of the United Nations Secretariat organized a meeting of the Expert Group on the Identification of Principles of International Law for Sustainable Development, within the framework established by the Rio Declaration on Environment and Development 5/ and Agenda 21, to identify basic principles of international law for sustainable development, consider possible classifications of such principles, and assess their potential practical implications in a legal context, including their role in the interpretation and application of existing international law in the field.

8. It was felt that the principles of interrelationship and integration (as reflected in principles 3 and 4 of the Rio Declaration) formed the backbone of international law in the field of sustainable development. They reflect a recognition of the need to move away from the treatment of fields of international law (relating, for example, to human rights, economic relations, environmental protection) as being self-contained, towards the development of general rules of international law in which those separate fields retain their distinct character but are subject to an interconnected approach.

9. The report of the Expert Group on the Identification of Principles of International Law for Sustainable Development is available to the Commission as a background document.

10. Pursuant to a decision of the Inter-Agency Committee on Sustainable Development at its 7th meeting (February 1996), the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat as task manager of chapter 39, drawing on the work of UNEP in the area of environmental law, will undertake an assessment of the implementation of the principles of the Rio Declaration in international and national law. It will be assisted in this undertaking not only by the work of the Geneva-based Expert Group but also by an International Environmental Conference on Codifying Rio Principles into National Legislation, which is being sponsored and organized by the Government of the Netherlands in May of this year.

III. TRENDS IN THE FIELD OF INTERNATIONAL LEGAL INSTRUMENTS AND MECHANISMS RELATED TO SUSTAINABLE DEVELOPMENT

11. With the increase in the number of relevant international legal instruments for sustainable development, there has been a growing trend towards identifying the basic concepts and principles underlying sustainable development. This is important for a number of reasons already specified, among which may be highlighted the need to advance understanding of what sustainable development means in relationship to international law and the importance of certain "benchmark principles" for guiding the drafting of national legislation, the interpretation of existing law and negotiations of future international law.

12. There has been a related trend towards the conclusion of "framework" conventions, which provide an opportunity to establish certain principles in law but leave sufficient flexibility for negotiations on more specific provisions, to be developed as the international consensus matures and as new scientific and technical data illuminate the need to act.

13. Concern exists, as expressed in this report and more fully in the report of the Secretary-General (E/CN.17/1996/18 and Add.1) on chapter 8 (Integrating environment and development in decision-making) of Agenda 21, about the need to reduce the reporting burden placed on countries, particularly developing countries, by international legal instruments and various intergovernmental decisions. This marks a growing trend towards coordination and streamlining of the reporting process and cooperation at international and national levels for the purpose of data collection, analysis and dissemination.

14. Issues of implementation, compliance and dispute settlement are gaining increasing attention. Current studies and discussion in international forums may force the review of some existing provisions and provide new ideas for future provisions. Some of the more recent mechanisms of implementation, such as that of "differentiated responsibilities", and of compliance, such as that of public exposure through, inter alia, fact-finding missions, may be of particular concern here.

15. Finally, there is a growing concern about establishing the means for more non-State participation both in negotiations of international legal agreements and in their implementation. In addition, fuller consideration is being given to providing access to non-State actors to the appropriate judicial forums for redress of individual and class grievances at the international level.

Notes

1/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

2/ FCCC/CP/1995/7/Add.1, decision 1/CP.1.

3/ A/AC.237/18 (Part II)/Add.1 and Corr.1, annex I.

4/ See document A/50/25, annex.

5/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.